



Old Attorney Docket No. MJA-27202/03  
New Attorney Docket No. HTEC-014/01US

PATENT

Express Mail Label Number: EL 838722747 US

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By: Deborah Slager

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Ross, et al.

Serial No.: 10/631,304

Examiner: [Not Assigned]

Confirmation No.: 3744

Art Unit: 3736

Filed: July 31, 2003

For: **RESPIRATORY ANALYZER FOR EXERCISE USE**

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### **PETITION UNDER 37 CFR §1.47(a)**

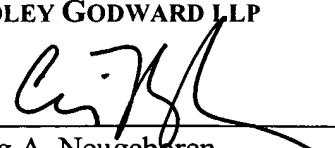
Applicants respectfully petition under 37 CFR § 1.47(a) for acceptance of a partially signed Declaration for the above-identified patent application. This Petition under 37 CFR § 1.47(a) is supported by a Declaration from the undersigned setting forth the factual requirements of 37 CFR §1.47(a). This Petition is also accompanied by the fee set forth in 37 CFR §1.17(h). Acceptance of this Petition is respectfully requested.

Dated: April 26, 2004

Cooley Godward LLP  
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Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
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By:

Respectfully submitted,  
**COOLEY GODWARD LLP**

  
Craig A. Neugeboren  
Reg. No. 39,314

Old Attorney Docket No. MJA-27202/03  
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*Deborah Hager*

APR 27 2004

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**DECLARATION SUPPORTING PETITION UNDER 37 CFR §1.47(a)**

I, Craig A. Neugeboren, declare that I am attorney in the law firm of Cooley Godward LLP, which is prosecuting the above-identified patent application on behalf of HealtheTech, Inc. ("HealtheTech"). Lynette Ross, Dirk Fengels, Edwin M. Pearce, Jr., James R. Mault ("Mr. Mault"), Christopher L. Sandys and Tom Kilbourn are believed to be the co-inventors of the above-identified patent application. One of the co-inventors, namely Mr. Mault, has refused to sign and otherwise not cooperated in signing a Declaration under 37 CFR § 1.63 and an Assignment for the above-identified patent application. Mr. Mault is a former employee of HealtheTech and has a duty to assign the above-identified patent application to HealtheTech based upon his employment agreement with HealtheTech. The circumstances surrounding Mr. Mault's refusal to sign the Declaration and Assignment are set forth below.

The above-identified patent application was prepared in July 2003 by Allen M. Krass of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. It is unknown why Mr. Krass did not file executed formal documents at the time the application was filed on July 31, 2003. In

September 2003, the law firm of Cooley Godward LLP was retained to prosecute the HealtheTech patent matters, and the transfer of hundreds of HealtheTech patent files began in mid-September, 2003. Due to priority matters and the press of other business, it was not until late February that the undersigned began to address the Notice to File Missing Parts in this matter. Since March 4, 2004, representatives of HealtheTech have made several attempts to contact Mr. Mault to obtain his signature on the Declaration and Assignment. Copies of the present application and accompanying documents were given to Mr. Mault during the later part of March, 2004, through his assistant, Sandra Wright. Ms. Wright has recounted giving the papers to Mr. Mault shortly thereafter. Representatives from HealtheTech have been following up with Ms. Wright and Mr. Mault on a weekly basis. As of April 22, 2004, neither Ms. Wright nor representatives of HealtheTech have received the signed documents back from Mr. Mault.

The last known address for Mr. Mault is as follows: 30589 Monarch Court, Evergreen, CO, 80439. This address is believed to be the residence address of Mr. Mault.

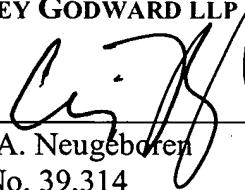
The undersigned declares further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and, further, that these statements were made with the knowledge that willful false statements, and the like, so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: April 26, 2004

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